

REMARKS

The Office Action rejects then pending claims 13-15 under 35 USC Sections 112 and 103(a).

With regard to the Section 112 rejection, it is believed the above claim amendments overcome the rejection. Withdrawal of the Section 112 rejection is respectfully requested.

With regard to the Section 103(a) rejection of the claims as being unpatentable over U.S. Patent No. 3,903,090 and WO 96/16048, Applicants respectfully traverse.

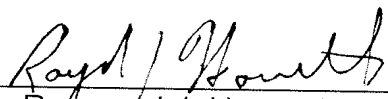
Regarding the rejection over the '090 patent, the reference is not relevant in this case. The '090 patent is directed to procymidone (i.e. a compound of formula XV in the description of the present application), which is not part of the present claims. And, in light of the above amendments, the arguments appearing on page 4 of the Office Action directed to setting forth the synergistic character of the mixture should now be overcome.

With regard to the argument concerning ratios appearing on page 5 of the Office Action and concluding that the claimed range is not commensurate in scope with the showing, Applicants clearly traverse. Indeed, Examples 1, 5, 6 and 11 in this case clearly show a ratio of prothioconazole/tebuconazole of 1:1, while Examples 5 and 6 each show additional ratios of 1:3 and 3:1 respectively. Thus, claims 13-15 are fully supported. And in any event, newly added claims 16 and 17 are beyond question supported by the examples in the case.

WO 96/16048 is certainly effective for all that it teaches and it is owned by the assignee of the present application as well. As such, it is in a position to know well what is in each case. It is simply the case that the present invention has found a specific compound of the formula (I) and a specific additional active ingredient of the formula (III) and a specific ratio where synergism has been found, and this is not specifically disclosed in WO 96/16048, and is a patentable invention in its own right.

In light of these claim amendments, Applicants assert that the Section 103 rejections have been fully overcome and withdrawal is respectfully requested. Review and reconsideration and allowance of the claims are respectfully requested.

Respectfully submitted,

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